

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING WAIVERS
FOR SOLID WASTE SERVICE FOR SPECIFIED SPRING VALLEY HEIGHTS ADDRESSES**

WHEREAS, select Spring Valley Heights residents have requested a waiver from solid waste services at the September 5, 2006 Council meeting; and

WHEREAS, The issue was discussed by the Utility Rate Subcommittee at their September 26, 2006 meeting; and

WHEREAS, the Utility Rate Subcommittee presented their recommendation to approve waivers at the October 3, 2006 Council meeting based upon past practice for several years; and

WHEREAS, the City Council agreed with the recommendation; and

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Milpitas as follows:

1. The waiver for mandatory solid waste services would apply only for owners of the following addresses: 510 Vista Spring Ct., 519 Vista Ridge Dr., 350 Vista Ridge Dr., 521 Vista Ridge Dr., 514 Vista Spring Ct., 3547 Vista Norte Ct., 523 Vista Ridge Dr. and 410 Vista Ridge Dr.
2. The City would forgive outstanding solid waste charges for the following addresses: 510 Vista Spring Ct., 519 Vista Ridge Dr., 350 Vista Ridge Dr., 521 Vista Ridge Dr., 514 Vista Spring Ct., 3547 Vista Norte Ct., 523 Vista Ridge Dr. and 410 Vista Ridge Dr.
3. The City Manager is authorized to enter into a Memorandum of Understanding with the property owners of the following addresses: 510 Vista Spring Ct., 519 Vista Ridge Dr., 350 Vista Ridge Dr., 521 Vista Ridge Dr., 514 Vista Spring Ct., 3547 Vista Norte Ct., 523 Vista Ridge Dr. and 410 Vista Ridge Dr.

PASSED AND ADOPTED this 17TH day of October 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Steven T. Mattas, City Attorney

**MEMORANDUM OF UNDERSTANDING
CITY OF MILPITAS AND
CERTAIN PREMISES OWNERS IN THE
SPRING VALLEY HEIGHTS RESIDENTIAL DEVELOPMENT**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”), effective the date of the adoption of Resolution No. ____, is entered into by and between the City of Milpitas, a public body, corporate and politic (“**City**”), and certain premises owners in the Spring Valley Heights residential development, whose names and addresses are shown on Exhibit A, attached hereto and made a part hereof (who may be referred to herein individually as, “**Owner**”, collectively the “**Owners**”) (referred to from time to time within this MOU as a “**Party**” or collectively the “**Parties**”).

RECITALS

WHEREAS, Spring Valley Heights is an association of properties located in the northeast portion of the territorial boundaries of the City of Milpitas, California; and

WHEREAS, the City is a public corporation created for municipal purposes pursuant to the terms and provisions of the General Law of the State of California, and by virtue of its corporate status has the authority to require or exempt premises owners, as defined in the Milpitas Municipal Code (“**MMC**”) Section V-200, to subscribe to solid waste collection services; and

WHEREAS, all premises owners (defined by MMC Section V-200-2.10) within the City are required to subscribe to and pay for solid waste service through the City’s franchise agreement with Browning Ferris Industries of California (“**BFI**”), and all premises owners within the City are directly obligated to subscribe for such services as mandated by MMC Section V-200-3.20; and

WHEREAS, the Owners request a waiver from mandatory subscription to the solid waste collection service as defined in MMC Section V-200-3.20 (the “**Waiver**”) because of: (a) historical precedent based upon fifteen years of providing for their own solid waste collection and hauling, (b) the nature of the hillside development and topography of the Spring Valley Heights community, (c) no historical record in the City or current evidence of any Owner illegally dumping solid waste in violation of the MMC and (d) City agreement of Owners’ viable and available alternatives for solid waste disposal; and

WHEREAS, the City determined based on a fifteen (15) year precedent of self-sufficiency, no historical record or current evidence of illegal dumping by any of the Owners and public testimony taken at the September 26, 2006 City Council Utility Rate Subcommittee meeting that it is in the best interests of the Parties to grant the Waiver exempting the Owners from the solid waste subscription requirement in MMC Section V-200-3.20, subject to the terms and provisions of this MOU; and

WHEREAS, the Parties agree that the Waiver does not run with the land, is applicable only to the Owners and is subject to termination by the City pursuant to the terms of this MOU.

This MOU will require Owners to provide notice to the City upon any disposition by sale or lease of their premises. Succeeding owners or lessees shall not be parties to this MOU or shall be entitled to the Waiver; and

WHEREAS, this MOU sets forth the Parties' agreement with respect to the specified Owners' solid waste service obligations, sets forth the agreement of the City to authorize the Waiver at the time this MOU is executed, sets forth the conditions of the Waiver, and further sets forth additional conditions for the rights and duties of the Parties respectively; and

TERMS

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties understand and agree as follows:

1. The Parties understand and agree that the Recitals above are true and correct and made a part of this MOU.
2. City grants Owners a Waiver from the requirements of MMC Section V-200-3.20.
3. The Waiver exists only for the nine (9) individual owners of premises in Spring Valley Heights (the Owners) who are parties hereto. All other current and subsequent premises owners in the Spring Valley Heights residential development are not a party or parties to this MOU and are not entitled to a waiver from the requirements of Milpitas Municipal Code Section V-200-3.20.
4. Prior to or upon any Owner's disposition of his, her or their premises whether by sale or lease, such Owner or Owners are required to do *all* of the following:
 - (i) Notify the City in writing of the disposition or change in ownership of their premises.
 - (ii) Notify the succeeding owner of his, her or their legal obligation to open a solid waste subscription account with the City, per MMC Section V-200-3.20.

This MOU shall automatically terminate as to that individual Owner who causes a disposition of their premises, whether by sale or lease and the Waiver shall be of no further force or effect as to the subsequent premises owner.

5. Miscellaneous Provisions

- (a) *Counterparts*. This MOU may be executed in counterparts, all of which together shall constitute a single original agreement. As executed, this MOU shall constitute an agreement, which shall be binding upon all parties to the MOU, notwithstanding that the signatures of all parties do not appear on the same page.

(b) *Agreement that Waiver Does Not Run with Land.* This MOU shall not be recorded and shall not run with any Owners' premises. It is binding only to the Parties hereto and not to their successors, heirs and/or assigns.

(c) *Defaults.* Any Party shall be deemed in default of this MOU when failing to substantially comply with any material term of this MOU. Failure to cure a default within fifteen (15) days after written notice provided to the defaulting party by the non-defaulting party, or if such default cannot reasonably be cured within said fifteen (15) day period, failing to commence such cure within said fifteen (15) day period and thereafter diligently prosecuting such cure, shall result in immediate termination of this MOU and any rights granted by the City as a result thereof.

(d) *Severability.* If any term or provision of this MOU shall be held invalid or unenforceable, the remainder shall not be affected.

(e) *Amendments.* This MOU may not be amended or altered except by a written instrument executed by all Parties.

(f) *Termination.* Unless earlier terminated pursuant to Section 4 or Section 5(c) above, this MOU may be terminated by the City or any Party, upon 30 days written notice. Circumstances upon which City may terminate this MOU shall be based upon any one of the following: (1) upon receiving written or verbal complaint or notification or making visual confirmation through inspection of solid waste accumulation by, upon or among the premises of any one of the Owners that endangers public health, safety or welfare; (2) upon receiving a written or verbal complaint or notification or making visual confirmation of vectors by, upon or among the premises of the Owners that endanger public health, safety or welfare; (3) upon receiving written or verbal complaint from another resident or premises owner in the Spring Valley Heights residential development concerning solid waste accumulation, or unacceptably high numbers of vectors within the Spring Valley Heights residential development area; (4) upon written or verbal notification or visual confirmation of illegal dumping in violation of any of the provisions of MMC Section V-200 by any Owner.

Upon termination by any Owner, a solid waste subscription pursuant to MMC Section V-200-3.20 must be commenced within 15 days of termination. Upon termination by the City because of any one of the aforementioned circumstances, charges for solid waste subscription services shall commence within 15 days after the written notice of termination is received by the non-terminating Party or Parties.

(g) *Entire Agreement.* This MOU and the attached Resolution, represent the entire agreement between the Parties and does not extend or purport to provide any other waiver from any other Federal, State, City or other local laws, regulations, ordinances or requirements.

[EXECUTION PAGE FOLLOWS]

FORM OF MOU APPROVED BY RESOLUTION NO. ____

IN WITNESS WHEREOF, the City has by order of the City Council caused this Memorandum of Understanding to be signed by the City Manager of the City pursuant to Resolution No. _____ and attested to by the City Clerk thereof, and certain Owners of premises within the Spring Valley Heights residential development and they have executed the same this ____ day of _____, 2006.

CITY”

“Owner”

City of Milpitas

By:_____

“Owner”

City Manager

Attest:

“Owner”

Mary Lavelle, City Clerk

“Owner”

Approved as to Form:

Richard D. Pio Roda
Assistant City Attorney

“Owner”

“Owner

“Owner”

“Owner”

“Owner”

EXHIBIT A

INDIVIDUAL NAMES AND ADDRESSES OF “OWNERS”

GRANTED THE WAIVER

510 Vista Spring Ct.- Franklin & Celina Camillo
519 Vista Ridge Dr.- Mahmood & Editha Ghani
350 Vista Ridge Dr.- Ola-Wunmi Hassan
521 Vista Ridge Dr.- Johnny G.T. Ho & Chia Ling Kao
514 Vista Spring Ct.- Ed Kandefer
3547 Vista Norte Ct.- Richard & Persides Tatom
523 Vista Ridge Dr.- Shiyao Zeng & Sherpa Pesang
410 Vista Ridge Dr.- Chien-Min Wan